

No. 17458

United States
Court of Appeals
for the Ninth Circuit

MARY M. BEHRENS,

Appellant,

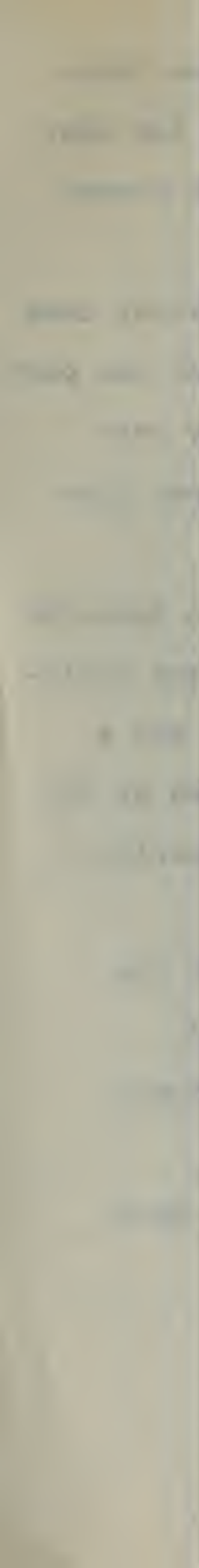
vs.

UNITED STATES OF AMERICA, and WILDA L.
DINNELL,

Appellee.

Transcript of Record

Appeals from the United States District Court for the
Southern District of California,
Northern Division



No. 17458

**United States
Court of Appeals
for the Ninth Circuit**

MARY M. BEHRENS,

Appellant,

vs.

UNITED STATES OF AMERICA, and WILDA L.
DINNELL,

Appellee.

Transcript of Record

Appeals from the United States District Court for the
Southern District of California,
Northern Division

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

PAGE

Answer and Counterclaim for Interpleader of Defendant United States of America.....	5
Answer to Complaint of Defendant Wilda L. Din- nell	9
Exhibit A—Decision of Board of Veterans Ap- peals	12
Certificate by the Clerk.....	29
Complaint	3
Findings of Fact, Conclusions of Law and Judgment	22
Judgment	25
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	28
Notice of Entry of Judgment.....	27
Order for Judgment.....	18
Proposed Modification of Findings of Fact and Con- clusions of Law.....	19



NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

(Mary M. Behrens)

LERRIGO, THUESEN,
THOMPSON & THOMPSON
MAURICE E. SMITH

804 Security Bank Building
Fresno 21, California

For Appellees:

(United States of America)

FRANCIS C. WHELAN
United States Attorney

DONALD A. FAREED
Assistant U. S. Attorney
Chief, Civil Division

RALPH F. BAGLEY, JR.,
Assistant U. S. Attorney,
600 Federal Building
Los Angeles 12, California

(Wilda L. Dinnell)

JOHN SAID
201 Security Bank Building,
Fresno, California.

SUMMERS & WATSON,
ROBERT C. SUMMERS,
501 West Church Street,
Champaign, Illinois.



In the United States District Court
Southern District of California
Northern Division

No. 2020-ND

MARY M. BEHRENS,

Plaintiff,

vs.

UNITED STATES OF AMERICA, WILDA L.
DINNEL, DOE I and DOE II,

Defendants.

COMPLAINT ON POLICY OF INSURANCE

Plaintiff complains against defendants and for cause of action alleges:

I.

That on 1 April, 1950, the defendant United States of America, issued to one Henry Dinnell, a policy of National Service Life Insurance, the same being policy number V 1426-22-92, a copy of which is incorporated herein and made a part hereof, as though fully set forth hereby reference and attached hereto as Exhibit "A".

II.

That on January 9, 1951, the said Henry Dinnell, duly and properly executed a "change or designation of beneficiary of National Service Life Insurance" on Veterans Administration Form 9-336, a copy of which is incorporated herein and set forth by reference hereto, and attached hereto as Exhibit "B".

III.

That said change or designation of beneficiary, as set forth in said Exhibit "B", designates as principal beneficiary of said National Service Life Insurance Policy, one Mary M. Dinnell; but the said principal beneficiary, Mary M. Dinnell, and the plaintiff herein, are one and the same person.

IV.

That said Henry Dinnell died on March 23, 1957.

V.

That on said date said policy of insurance was in full force and effect and the said premiums thereon were fully prepaid.

VI.

That on said date the said Mary M. Dinnell was the named beneficiary of said policy of insurance.

VII.

That thereafter, plaintiff herein demanded payment of the said policy of insurance under the terms and conditions thereof; that the said defendant United States of America has refused and still refuses said payment; that the said United States of America has paid the sum of \$10,000.00 under said policy of insurance to the said defendant Wilda L. Dinnell.

VIII.

That within six (6) years last past, to wit, on December 29, 1959, the Veterans Administration, Board of Veterans Appeals, denied plaintiff's claim for said payment under said policy of insurance.

Wherefore, plaintiff prays :

1. Judgment in the sum of \$10,000.00;
2. Costs of suit incurred herein; and
3. For such other and further relief as to the Court may seem just and proper.

LERRIGO, THUESEN,
THOMPSON & THOMPSON,
/s/ By MAURICE E. SMITH.

Duly Verified.

[Endorsed] : Filed Feb. 4, 1960.

[Title of District Court and Cause.]

ANSWER AND COUNTERCLAIM FOR INTER-
PLEADER OF DEFENDANT UNITED
STATES OF AMERICA

Defendant, United States of America, for answer to plaintiff's Complaint, admits, denies, and alleges as follows :

I.

Admits each and every allegation contained in Par. I, II, III, IV, V, and VIII, of plaintiff's Complaint.

II.

Denies each and every allegation of Par. VI of plaintiff's Complaint.

III.

Admits that the plaintiff herein demanded payment of the said policy of insurance under the terms and

conditions thereof; that the said defendant United States of America has refused and still refuses said payment as set forth in Par. VII of plaintiff's Complaint, but denies that the said United States of America has paid the sum of \$10,000. or any sum under said policy of insurance to the said defendant, Wilda L. Dinnell.

Further Answering Herein, and by Way of Counterclaim for Interpleader, this Defendant Says:

I.

That Henry Lee Ray Dinnell hereinafter referred to as the insured, while a member of the Armed Forces of the United States and effective as of April 1, 1950, was issued by the Veterans Administration a renewal policy of National Service Life Insurance (identified as Policy No. V-1426-22-92) for which he designated the plaintiff, Mary M. (Dinnell) Behrens and his daughter Patsy Ruth, his son Billy Joe, and his stepdaughter Juanita E. Smith, as beneficiaries for \$10,000.; that premiums on said policy were paid by the insured to include July 1, 1951, after which said premiums were waived effective July 1, 1951, pursuant to insurance application for a premium waiver under Section 662 of National Service Life Insurance Act of 1940, as amended (38 U.S.C. §823, 1954 Ed.); that the insurance was again renewed effective April 1, 1955, for another five-year term; that the insured died on the 23 of March, 1957, while the said policy of insurance was in full force and effect.

II.

That following the death of the insured, the plaintiff Mary M. (Dinnell) Behrens filed in the Veterans Administration a claim to the proceeds of the said policy, as the designated beneficiary of record; that a claim for the proceeds of the said policy was also filed at the Veterans Administration by the co-defendant herein, Wilda L. Dinnell, who claimed the insurance by virtue of an alleged change in the designation of the beneficiary in her favor; that both claimants were advised by letters dated July 1, 1957, that the plaintiff was the last named beneficiary of record and they were requested to furnish any evidence they might have to show that the insured had subsequently changed the beneficiary for his insurance. Thereafter, upon consideration of the said claims and based upon certain written and oral testimony, as well as based upon the intention evidenced by the notation on D.D. Form 93, signed by the insured on October 25, 1954, the Veterans Administration rendered a decision on September 10, 1958, that the claim of the co-defendant should be allowed and that all other claims should be denied. The claims of the plaintiff, insured's mother and his children, which had previously been filed, were accordingly disallowed on September 15, 1958, and they were advised accordingly. The said holding being affirmed on appeal by decision dated December 29, 1959, in effect stated that the insurance should be paid to the co-defendant, Wilda L. Dinnell; that notice of the denial of plaintiff's claim was forwarded to all parties by letter dated December 29, 1959, the instant action resulting.

III.

This defendant says that it admits liability under the said policy of insurance and is ready and willing to pay the proceeds thereof to the party lawfully entitled thereto, but because of the conflicting claims of the plaintiff and the co-defendant, Wilda L. Dinnell, it cannot safely make payment to either of them without the aid of this Court. In order, therefore, to avoid multiplicity of suits and the possible subjection of this defendant to double liability under the said policy, it is necessary that this Court determine whether the plaintiff, Mary M. Behrens or the said Wilda L. Dinnell, is entitled to receive the death benefits thereof.

For a Separate, Second and Affirmative Defense, Defendant Alleges:

This Court has no jurisdiction in this action to award costs against the United States.

Wherefore, the defendant prays:

I.

That upon a final hearing the Court adjudge whether the plaintiff or the co-defendant, or either of them, is entitled to receive the death benefits of the policy of insurance herein sued upon and direct the payment of the proceeds thereof to the person found by the Court to be entitled thereto;

II.

That the Court discharge this defendant from any and all liability in the premises, except to the person, or persons, who shall be adjudged by the Court to be entitled to receive the said insurance benefits.

III.

For its costs and such further relief as may to the Court seem proper.

LAUGHLIN E. WATERS,
United States Attorney

RICHARD A. LAVINE,
Assistant U. S. Attorney,
Chief, Civil Division,

/s/ By EARL P. WILLENS,
Assistant U. S. Attorney,
Attorneys for defendant
United States of America.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed June 27, 1960.

[Title of District Court and Cause.]

ANSWER OF DEFENDANT,
WILDA L. DINNELL

Now comes the defendant, Wilda L. Dinnell, by Robert C. Summers and John Said, her attorneys, and for her Answer to the Complaint of the plaintiff says:

1. The defendant admits that on April 1, 1950, the United States of America issued to Henry Dinnell a policy of National Service Life Insurance, number V 1426-22-92, and that Exhibit "A" attached to the Complaint is a copy of said policy.

2. The Defendant admits that on January 9, 1951, the said Henry Dinnell designated his then-wife Mary

Dinnell (now Mary Behrens) as principal beneficiary for the full amount of his insurance under said policy, and his son, Billy J. Dinnell, as contingent beneficiary; and defendant further answering says that in April, 1952, the said Henry Dinnell obtained a Decree of Divorce from the said Mary Dinnell and on December 31, 1952, the said Henry Dinnell did enter into a marriage with the defendant at Rantoul, County of Champaign, State of Illinois, and thereafter changed the beneficiary on the said policy from the said Mary Dinnell to this defendant, and particularly on October 25, 1954, the said Henry Dinnell did sign a DD form 93, Record of Emergency Data, provided by Public Law 23 82nd Congress, designating this defendant as beneficiary for 100 per cent of the proceeds under the said policy, and designating as his contingent beneficiary, Louise Dinnell; and again on April 10, 1956, the said Henry Dinnell did execute another Data form to the Service Department of the U. S. Air Force wherein and whereby the said Henry Dinnell did designate this defendant as the sole beneficiary of the funds under the said insurance policy and the said Henry Dinnell did by numerous letters and documents during the months of November and December, 1956, designate this defendant as the sole beneficiary under the said policy of insurance and this defendant was at all times thereafter and at the date of the death of the said Henry Dinnell on March 23, 1957, the sole beneficiary under the said policy of insurance, and the said Henry Dinnell intended that this defendant be the sole beneficiary under the said policy.

3. The Defendant admits that the said Mary M. Dinnell, who at one time had been listed as principal beneficiary under said policy of insurance, as it is shown by Exhibit "B", is one and the same person as the plaintiff herein but this defendant adopts and re-alleges the said allegations set forth in paragraph two of this Answer as and for her additional allegations of this paragraph.

4. The defendant admits that the said Henry Dinnell died on March 23, 1957, at Lackland Air Force Base Hospital, San Antonio, Texas.

5. The defendant admits the allegations of paragraph five.

6. The defendant admits that Mary M. Dinnell was at one time named the principal beneficiary of the said policy of insurance, but defendant states affirmatively that at the time of the death of the said Henry Dinnell, and at all times from and after November 25, 1954, this defendant was the sole and exclusive beneficiary under the said policy of insurance.

7. The defendant admits that the said plaintiff has made a claim for payment under the said policy of insurance and said claim was prosecuted through the Board of Veterans Appeals, Veterans Administration, Washington, D.C., which said Board of Veterans Appeals rendered a decision on December 29, 1959, finding and declaring that this defendant was entitled to the proceeds under the said policy of insurance and the said decision of the said Board of Veterans Appeals is attached hereto and marked Exhibit "A" and incorporated herein.

8. The defendant admits the allegations of paragraph eight.

Wherefore, this defendant denies that the plaintiff is entitled to a judgment in the sum of Ten Thousand and 00/000 Dollars (\$10,000) and costs of suit or for any relief whatsoever, and this defendant prays that the Complaint of the plaintiff may be dismissed in bar of action at the costs of the plaintiff.

WILDA L. DINNELL,

Defendant

/s/ By ROBERT C. SUMMERS,

Her Attorneys

Exhibit A

Veterans Administration
Board of Veterans Appeals

Dec. 29, 1959

DINNELL, Henry

Claim No. XC-20 255 166

Docket No. 503 442

Mary Behrens

Billy J. Dinnell

Patsy D. Herndon

Title 38, U. S. C.

NSLI—Contract Benef. Desig. Denied

Mary Behrens represented by: Maurice E. Smith,
attorney.

Question at Issue:

Disposition of the proceeds of the serviceman's policy of National Service Life Insurance.

Contentions: Mary Behrens, former wife of the serviceman, contends that she was designated principal beneficiary for the serviceman's insurance and that no change in beneficiary by the serviceman was recorded prior to his death. She contends further that a form dated October 25, 1954, should not be accepted as a change of beneficiary.

It has also been contended to the effect that the serviceman's children, Billy J. Dinnell and Patsy D. Herndon, should receive insurance benefits.

Outline of Material Evidence: National Service Life Insurance in the amount of \$10,000.00 was in force when the serviceman died on March 23, 1957. The agency of original jurisdiction has determined the insurance proceeds are payable to his widow, Wilda L. Dinnell. Claims by the serviceman's mother, Louise Dinnell; former wife, Mary Behrens; son, Billy J. Dinnell and daughter, Patsy D. Herndon, were denied because they were not the designated beneficiaries.

By form dated January 9, 1951, the serviceman designated his former wife, Mary, as principal beneficiary for the full amount of his insurance and his son as contingent beneficiary. On May 31, 1951, he signed an application for waiver of premiums under the provisions of Public Law 23, 82nd Congress. The waiver was granted and it was by virtue thereof the insurance was in force when the serviceman died.

During April 1952, the serviceman obtained a divorce decree dissolving his marriage with Mary. In December 1952, the serviceman and Wilda were married.

The report of a field examination is of record. Mary and her sister deposed to the effect that the service-

man stated he would never change the beneficiary for the policy and that around September or October 1956 he said he still had the insurance in Mary's name. The statement of the sister which had been submitted before the field examination is included in the evidence now before the Board. Also included therein is a joint statement of James and Lorene Dinnell presented for consideration with the claim of the children.

On October 25, 1954, the serviceman signed a DD Form 93, Record of Emergency Data, upon which he named Wilda for various Service Department purposes. On a portion of the form provided for designation of beneficiary for indemnity provided by Public Law 23, 82nd Congress, the serviceman listed Wilda as beneficiary for "100%" and under her name his mother as beneficiary for "100%". Above these designations is advice that the form did not operate as a designation or change of beneficiary for insurance contracts. The serviceman's signature to this form was witnessed and the witness has furnished a statement in which he sets forth that to the best of his knowledge when he witnessed the form the serviceman was fully aware that he had \$10,000.00 insurance and that he knew he was designating his wife, Wilda, as his primary beneficiary and his mother as contingent beneficiary. The copy of the aforesaid form was received from the Service Department. Also received from the Service Department was copy of another data form which was dated April 10, 1956, and by which the serviceman again named Wilda for a number of Service Department purposes. The serviceman's widow has furnished several letters written to her by the serviceman during November and December 1956. These letters reflect the serviceman's

love and affection for Wilda. The letters include references to his insurance. One letter is under date of December 13, 1956, and in it, after referring to his insurance, he states that if something happened to him she would be sitting on easy street as she would be receiving money from four sources. With this letter he sent Wilda a Service Department publication upon which the four sources to which he referred in his letter are set forth. One of the sources is "Insurance." Essential Elements for Entitlement: Literal compliance with the applicable law and regulations would require a change of beneficiary respecting National Service Life Insurance to be made in writing in proper form and transmitted to this Administration. However, this Administration and Federal Courts hold generally that legal technicalities will be brushed aside to effectuate an intent on the part of the insured to make a change if he took adequate affirmative action to make a change and reasonably believed he had accomplished a change. Receipt of evidence establishing a change of beneficiary designation for National Service Life Insurance after death of the insured does not in and of itself bar recognition of the change.

Discussion and Decision: By form dated January 9, 1951, the serviceman designated Mary as principal beneficiary for his insurance and his son, Billy J. Dinnell, as contingent beneficiary. Later, he applied for and was granted waiver of premiums under Section 622 of the National Service Life Insurance Act of 1940, as amended, which was provided by Public Law 23, 82nd Congress. In April 1952 he obtained a divorce dissolving his marriage with Mary and in December of that year he married Wilda. After marrying Wilda

and while his insurance was in force under the provisions added by Public Law 23, 82nd Congress, he completed the DD Form 93, Record of Emergency Data, dated October 25, 1954, upon which he first listed Wilda as beneficiary for "100%." This form has information on it to the effect that it did not change the beneficiary designation for insurance. However, it is settled by court decisions that the use of the improper form does not warrant disregarding the serviceman's intent if the completion of the designation on the form was for the purpose of changing an insurance beneficiary designation. The statement of the witness to this form shows that it was the intent of the serviceman by the designations thereon to name Wilda as principal beneficiary for his insurance. The witness to the form is not shown to be interested in any way in the disposition of the issue presented on this appeal. It is a known fact that confusion frequently existed as to the proper way to change a beneficiary designation for insurance which was being maintained in force under the provisions of the same statute which made available indemnity or "free insurance" as it was often described by servicemen. The DD Form 93 was frequently used for this purpose. Collateral evidence is acceptable to show it was intended to be used as a change of beneficiary for insurance. The collateral evidence in this case includes the letters written by the serviceman and the Service Department form which he sent to Wilda showing that in December 1956 he was of the opinion he had so arranged his insurance that Wilda would receive the proceeds thereof. In considering the question of what is sufficient affirmative action to change a beneficiary designation one court was

of the opinion that the execution of the form for application of waiver of premiums under the provisions of Section 622 was an affirmative act by which the insured reasonably believed he had changed the beneficiary of his policy and by which he had done everything reasonably within his power to effect the change (Moore vs. U. S. 129 FSupp 456). In the instant case, we also have an appreciable amount of other evidence such as the data form dated October 25, 1954, and the letters written by the serviceman and the statement of the witness to the aforesaid data form.

In view of the foregoing and with consideration given all the evidence, the Board finds that the serviceman changed the beneficiary designation for his insurance from Mary Behrens as principal beneficiary and Billy J. Dinnell as contingent beneficiary to Wilda L. Dinnell as principal beneficiary and Louise Dinnell as contingent beneficiary. It follows, therefore, it is the Board's decision the agency of original jurisdiction properly determined the insurance proceeds are payable to the serviceman's widow, Wilda L. Dinnell, and that entitlement of anyone else to the insurance proceeds is not established. The appeal is denied and this decision constitutes final administrative denial of the claim.

/s/ By WILLIAM C. COLE
Associate Member

/s/ By L. E. IMHOFF,
Associate Member

/s/ By W. N. MORELL,
Associate Member.

Duly Verified.

[Endorsed]: Filed July 12, 1960.

[Title of District Court and Cause.]

ORDER FOR JUDGMENT

The above-entitled action was set for trial before the court, sitting without a jury, on March 7, 1961, the plaintiff being represented by Lerrigo, Thuesen, Thompson & Thompson, Maurice Smith, Esq., appearing; and the defendant Wilda L. Dinnell, being represented by John Said, Esq.

It was stipulated in open court that the case be submitted on the record, including the files and records of the Veterans Administration.

The court, after reviewing the record, finds that the deceased, Henry Dinnell, intended that defendant Wilda L. Dinnell receive the entire proceeds of his National Service Life Insurance policy No. V 1426-22-92 and that he manifested this intention by executing DD Form 93 on October 25, 1954, wherein he listed her as beneficiary for 100% of his insurance. There are other documents and letters, as well as the statement of Sgt. Charles J. Thomas, Jr., that support this finding.

Accordingly, judgment should be entered for Wilda L. Dinnell for the entire proceeds of said policy of life insurance without costs.

Counsel for the defendant is directed to prepare and lodge findings of fact, conclusions of law and form of judgment in accordance with Local Rule 7.

The clerk of this court is directed to forthwith serve copies of this order by United States mail upon the attorneys for the parties appearing in this cause.

Dated: March 9, 1961.

/s/ By M. D. CROCKER,
United States District Judge.

[Endorsed]: Filed March 9, 1961.

[Title of District Court and Cause.]

PROPOSED MODIFICATION OF FINDINGS OF
FACT AND CONCLUSIONS OF LAW

Plaintiff herein proposes that Findings of Fact and Conclusions of Law heretofore proposed by defendant be modified in the following manner:

I.

Plaintiff proposes that Finding of Fact No. III be modified to read:

“That said Henry Dinnell in April 1952 obtained a decree of divorce from the said Mary M. Dinnell; that on December 31, 1952, the said Henry Dinnell entered into a marriage with the defendant, Wilda L. Dinnell, at Rantoul, County of Champaign, State of Illinois; that said Henry Dinnell thereafter did not change the beneficiary on said policy of insurance and the named beneficiary thereunder at all times remained Mary M.

Dinnell; that on October 25, 1954, the said Henry Dinnell did execute United States Air Force Form DD 93, Record of Emergency Data, designating the said Wilda L. Dinnell 'receive each month 100% of my pay' and that the said Wilda L. Dinnell be designated to receive 100% of service man's indemnity under Public Law 23 of the 82nd Congress (gratuity pay and benefits); that said DD Form 93 specifically states: 'Does not operate as a designation or a change of beneficiary of any insurance contracts issued by the United States Government'; that on April 10, 1956, said Henry Dinnell did execute another U.S.A.F. DD 93 Data Form wherein and whereby the said Henry Dinnell did designate said Wilda Lee Dinnell as beneficiary 'for the unpaid pay and allowance (Public Law 147, 84th Congress)' as person to be notified in case of emergency as beneficiary for gratuity pay and as person to receive personal effects for safekeeping; that said U.S.A.F. Form DD 93 (Record of Emergency Data) specifically states therein by specific insertion typewritten, 'not applicable to National Service Life insurance'; that at the date of the death of the said Henry Dinnell on March 23, 1957, the sole beneficiary under the said policy of insurance was and is the named beneficiary of Mary M. Dinnell; that the said Henry Dinnell specifically intended to leave the

said named beneficiary, Mary M. Dinnell on said policy of insurance; that the said Henry Dinnell specifically made each DD Form 93 not applicable to National Service Life insurance beneficiary.”

II.

Plaintiff proposes that Conclusions of Law No. 1 be modified to read as follows:

“1. That plaintiff Mary M. Behrens is the named beneficiary under said policy of insurance and is entitled to the proceeds thereof.”

“2. That the defendant, Wilda L. Dinnell is not entitled to the proceeds of said insurance policy.”

Dated this 8th day of May, 1961.

LERRIGO, THUESEN,
THOMPSON & THOMPSON,
/s/ By MAURICE E. SMITH,
Attorneys for Plaintiff.

Affidavit of Service by Mail Attached.

In the United States District Court
Northern District of California
Northern Division

No. 2020-ND

MARY M. BEHRENS,

Plaintiff,

vs.

UNITED STATES OF AMERICA, WILDA L.
DINNELL, et al.,

Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF
LAW AND JUDGMENT

This cause came on regularly for trial on the 7th day of March, 1961, before the Court sitting without a jury, a jury trial having been waived by the parties, and Maurice Smith of the firm of Lerrigo, Thuesen, Thompson & Thompson appearing as attorney for the plaintiff, no one appearing for the defendant United States of America, and John Said appearing as attorney for defendant Wilda L. Dinnell; thereupon, Maurice Smith and John Said made statements stipulating that the matter could be considered by the Court on the basis of the record made before the Board of Veterans Appeals, including the files and records of the Veterans Administration; and the Court having examined said entire record before the Board of Veterans Appeals, including the files and records of the Veterans Administration, and the cause having been submitted to the Court for decision, and the Court being fully advised in the premises, now makes its Findings of Fact as follows:

Findings of Fact

I.

That on or about April 1 of 1950, the defendant United States of America issued to one Henry Dinnell, a policy of National Service Life Insurance, the same being Policy No. V 1426-22-92; that in said policy of insurance, said Henry Dinnell designated the plaintiff and his daughter Pasty Ruth, his son Billy Joe, and his stepdaughter Juanita E. Smith, as beneficiaries for Ten Thousand Dollars (\$10,000.00); that premiums on said policy were paid by said Henry Dinnell to include July 1, 1951, after which said premiums were waived effective July 1, 1951, pursuant to insurance application for a premium waiver under Section 662 of National Service Life Insurance Act of 1940, as amended (38 U.S.C. §823, 1954 Ed.); that the insurance was again renewed, effective April 1, 1955, for another five-year term; that the said Henry Dinnell died on March 23, 1957, while said policy of insurance was in full force and effect.

II.

That on January 9, 1951, said Henry Dinnell executed a "change or designation of beneficiary of National Service Life Insurance" on Veterans Administration Form 9-336; that said change or designation of beneficiary designated as principal beneficiary one Mary M. Dinnell (now known as Mary M. Behrens, the plaintiff in the foregoing action).

III.

That said Henry Dinnell in April 1952 obtained a decree of divorce from the said Mary M. Dinnell; that

on December 31, 1952, the said Henry Dinnell entered into a marriage with the defendant, Wilda L. Dinnell, at Rantoul, County of Champaign, State of Illinois; that said Henry Dinnell thereafter changed the beneficiary on said policy from said Mary M. Dinnell to defendant Wilda L. Dinnell; that particularly on October 25, 1954, the said Henry Dinnell did sign a DD Form 93, Record of Emergency Data, provided by Public Law 23, 82nd Congress, designating said defendant Wilda L. Dinnell as beneficiary for 100% of the proceeds under the said policy; that on April 10, 1956, said Henry Dinnell did execute another Data Form to the Service Department of the U. S. Air Force, wherein and whereby the said Henry Dinnell did designate said defendant Wilda L. Dinnell as the beneficiary of a number of Service Department purposes; that at the date of the death of the said Henry Dinnell on March 23, 1957, the sole beneficiary under the said policy of insurance was and is Wilda L. Dinnell; that Mary M. Dinnell was not the named, or any, beneficiary of said Henry Dinnell at the time of his death on March 23, 1957.

IV.

That on or about December 29, 1959, the Veterans Administration, Board of Veterans Appeals, denied plaintiff's claim for payment under said policy of insurance; that defendant United States of America admits liability under the said policy of insurance and is

ready and willing to pay the proceeds thereof to the party lawfully entitled thereto.

Conclusions of Law

From the foregoing facts, the Court concludes:

1. That plaintiff Mary M. Behrens is not entitled to the proceeds of said insurance policy;
2. That the defendant Wilda L. Dinnell is entitled to the proceeds of said insurance policy, without costs, but after payment of attorney fees;
3. That Robert C. Summers, Esq. has rendered legal services to the defendant Wilda L. Dinnell, reasonably worth the sum of \$150.00; that John Said, Esq. has rendered legal services to the defendant Wilda L. Dinnell, reasonably worth the sum of \$850.00 (\$100.00 heretofore having been paid as a retainer); and that accordingly, said Robert C. Summers should receive \$150.00 out of the proceeds of said insurance policy, and that said John Said should receive \$750.00 additional out of the proceeds of said insurance policy.

Judgment

In accordance with the foregoing Findings of Fact and Conclusions of Law, It Is Ordered, Adjudged and Decreed:

- I. That plaintiff Mary M. Behrens take nothing by this action;

II. That the defendant Wilda L. Dinnell have judgment against the plaintiff Mary M. Behrens and the defendant United States of America in the sum of \$10,000.00, and that the defendant United States of America pay to defendant Wilda L. Dinnell the sum of \$9,100.00, to Robert C. Summers, Esq. the sum of \$150.00, and to John Said, Esq. the sum of \$750.00.

May 12th, 1961

/s/ By M. D. CROCKER,
United States District Judge.

Disapproved as to form:

LERRIGO, THUESEN,
THOMPSON & THOMPSON,

/s/ By MAURICE E. SMITH,
Attorneys for Plaintiff

LAUGHLIN E. WATERS,
United States Attorney

DONALD A. FAREED,
Assistant U. S. Attorney
Chief, Civil Division.

/s/ By RALPH F. BAGLEY JR.,
Assistant U. S. Attorney
Attorneys for defendant
United States of America.

[Endorsed]: Lodged May 11, 1961. Filed May 12, 1961. Entered May 15, 1961.

United States District Court
Southern District of California

Office of the Clerk

Room 231, U. S. Post Office & Court House
Los Angeles-12, California.

Summers & Watson, Attorneys at Law, 501 W. Church Street, Champaign, Illinois; John Said, Attorney at Law, 201 Security Bank Building, Fresno 21, California; Lerrico, Thuesen, Thompson & Thompson, Attorneys at Law, 804 Security Bank Building, Fresno 21, California, Attn. Maurice Smith; Donald A. Fareed, Assistant U. S. Attorney, Chief, Civil Division, Federal Building, Los Angeles 12, California, Attn: Ralph F. Bagley, Jr.

Re: 2020-ND Mary M. Behrens v. United States & Wilda L. Dinnell et al.

You are hereby notified that Judgment in the above-entitled case has been entered this day in the docket.

Dated: May 15, 1961.

CLERK, U. S. DISTRICT COURT,
/s/ By C. A. SIMMONS,
Deputy Clerk.

[Title of District Court and Cause.]

NOTICE OF ENTRY OF JUDGMENT

To the Plaintiff, Mary M. Behrens, and to Lerrigo, Thuesen, Thompson & Thompson, her attorneys, and to the defendant United States of America and to Messrs. Donald A. Fareed and Ralph F. Bagley, Jr., of the United States Attorney's Office, its attorneys:

You, and Each of You, Will Please Take Notice that judgment in the above-entitled action, in favor of defendant Wilda L. Dinnell, and against plaintiff Mary M. Behrens and the defendant United States of America, was duly given, made and entered in the records and docket of the above-entitled Court on the 15th day of May, 1961.

SUMMERS & WATSON, and
JOHN SAID,

/s/ By JOHN SAID,

Attorneys for defendant,
Wilda L. Dinnell.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed May 22, 1961.

[Title of District Court and Cause.]

NOTICE OF APPEAL TO THE CIRCUIT
COURT OF THE NINTH CIRCUIT

To the Clerk of the Above Entitled Court:

Notice Is Hereby Given that Mary M. Behrens, the plaintiff herein, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the Judgment entered in this action on the 15th day of May, 1961.

Dated this 5th day of June, 1961.

LERRIGO, THEUSEN,
THOMPSON & THOMPSON

Attorneys for Plaintiff,

/s/ By MAURICE E. SMITH.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed June 15, 1961.

[Title of District Court and Cause.]

CERTIFICATE BY THE CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the foregoing documents together with the other items, all of which are listed below, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled case:

Page:

- 1 Names and Addresses of Attorneys
- 2 Complaint, filed 2/4/60
- 13 Answer and Counterclaim for Interpleader of Defendant United States of America, filed 6/27/60
- 18 Answer of Defendant, Wilda L. Dinnell, filed 7/12/60
- 26 Memorandum of Contentions of Fact and Law by Defendant United States of America, filed 10/4/60
- 41 Memorandum of Contentions of Fact and Law by Defendant Wilda L. Dinnell, filed 11/1/60
- 44 Order for Judgment, filed 3/9/61
- 47 Plaintiff's Proposed Modification of Findings of Fact and Conclusions of Law
- 51 Findings of Fact and Conclusions of Law and Judgment, filed 5/12/61, entered 5/15/61
- 55 Clerk's copy of notice of entry of judgment, dated 5/15/61

30

Mary M. Behrens vs.

56 Defendant Wilda L. Dinnell's Notice of entry of judgment, filed 5/22/61

59 Notice of Appeal, filed 6/15/61

62 Designation of record on appeal, filed 6/15/61

Dated: July 11, 1961.

[Seal] JOHN A. CHILDRESS,
Clerk

/s/ By WM. A. WHITE,
Deputy Clerk

[Endorsed]: No. 17458. United States Court of Appeals for the Ninth Circuit. Mary M. Behrens, Appellant vs. United States of America, and Wilda L. Dinnell, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Northern Division.

Filed July 12, 1961.

Docketed July 17, 1961.

/s/ FRANK H. SCHMID,
Clerk of the United States Court of Appeals for the Ninth Circuit.